

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

BRIAN MARQUINCE LONG, )  
Plaintiff, )  
VS. ) No. 18-1121-JDT-cgc  
STEVE PAGE, ET AL., )  
Defendants. )

**ORDER DISMISSING COMPLAINT AND GRANTING LEAVE TO AMEND**

On July 9, 2018, Plaintiff Brian Marquince Long, who is currently incarcerated at the Bledsoe County Correctional Complex in Pikeville, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) The complaint concerns Long’s previous incarceration at the Henry County Corrections Facility (“Jail”) in Paris, Tennessee. The Court issued an order on July 10, 2018, granting leave to proceed *in forma pauperis* and assessing the civil filing fee pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 4.) The Clerk shall record the Defendants as Lieutenant Steve Page, Captain First Name Unknown Dean, and Henry County.<sup>1</sup>

<sup>1</sup> The Clerk also listed the Henry County Jail Administration as a defendant. Long's use of the term "Jail Administration" may be only a description of the Defendants' positions. However, to the extent that he does intend to name the Jail Administration as a defendant, there does not appear to be any such entity that is suable apart from Henry County itself.

The allegations of the complaint, while not completely decipherable, are as follows:

That I have used proper grievance procedures institutional for relief. I have been targeted, ster[e]otyped, discriminated, and intimi[d]ated [sic], by staff. Such as Lt. Steve Page. The Jail Administration is intimi[d]ated to address Lt. Steve Page they state he will infraction staff for being [insubordinate]. I have copies of my grievances in this institutional facility but never got any hearing relief. The continuance of profile and targeted is a tiresly [sic] personal documentations of this history pattern of abuse. Jail conditions as well [as] medical health care are not safe reproductive attention nor modering [sic] safely. The cell [I'm] in has no emergency button. The sanitizing safety for health is inhumane, cruel, and unu[su]al.

(ECF No. 1 at 2.) Long seeks monetary damages and injunctive relief. (*Id.* at 3.)

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); see also 28 U.S.C. § 1915(e)(2)(B).

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). “Accepting all well-pleaded allegations in the complaint as true, the Court ‘consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.’” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). “[P]leadings that . . . are no more than conclusions, are not entitled to the assumption

of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679; *see also Twombly*, 550 U.S. at 555 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”).

“*Pro se* complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 F. App’x 608, 612, 613 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’” (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975))).

Plaintiff filed his complaint on the court-supplied form for actions under 42 U.S.C. §1983. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for

redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

To state a claim under § 1983, a plaintiff must allege two elements: (1) a deprivation of rights secured by the "Constitution and laws" of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Long has not stated a claim against Henry County under § 1983. When a § 1983 claim is made against a municipality or county, the court must analyze two distinct issues: (1) whether the plaintiff's harm was caused by a constitutional violation; and (2) if so, whether the municipality or county is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992).

A local government "cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 691 (1978); *see also Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994); *Berry v. City of Detroit*, 25 F.3d 1342, 1345 (6th Cir. 1994). A municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691-92; *Deaton v. Montgomery Cnty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal

liability, a plaintiff “must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy.” *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep’t*, 8 F.3d 358, 364 (6th Cir. 1993)). “[T]he touchstone of ‘official policy’ is designed ‘to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.’” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 138 (1988) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479-80 (1986)). Long does not allege that he suffered any injury arising from an unconstitutional policy or custom of Henry County.

The complaint contains no allegations whatsoever against Defendant Dean. When a complaint fails to allege any action by a defendant, it necessarily fails to “state a claim for relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

To the extent Long complains because he filed grievances about the conditions at the Jail yet allegedly received no relief nor any proper responses, he has no claim for violation of due process. Prisoners do not have a constitutionally protected due process right to an effective grievance procedure. *See Hewitt v. Helms*, 459 U.S. 460, 467 (1983); *Walker v. Mich. Dep’t of Corr.*, 128 F. App’x 441, 445 (6th Cir. 2005); *Argue v. Hofmeyer*, 80 F. App’x 427, 430 (6th Cir. 2003); *Young v. Gundy*, 30 F. App’x 568, 569-70 (6th Cir. 2002); *Carpenter v. Wilkinson*, No. 99-3562, 2000 WL 190054, at \*2 (6th Cir. Feb. 7,

2000); *McDonald v. Lasslett*, No. 2:18-CV-117, 2018 WL 3867520, at \*4 (W.D. Mich. Aug. 15, 2018).

Long also appears to contend he was subjected to retaliation by the Defendants because of the grievances he filed. “Retaliation on the basis of a prisoner’s exercise of his First Amendment rights violates the Constitution.” *Harbin-Bey v. Rutter*, 420 F.3d 571, 579 (6th Cir. 2005).

A retaliation claim essentially entails three elements: (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two — that is, the adverse action was motivated at least in part by the plaintiff’s protected conduct.

*Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc); *see also Scott v. Churchill*, 377 F.3d 565, 569 (6th Cir. 2004) (same); *Smith v. Campbell*, 250 F.3d 1032, 1036 (6th Cir. 2001) (same). The filing of a non-frivolous grievance is protected conduct under the First Amendment. *Thomas v. Eby*, 481 F.3d 434, 440 (6th Cir. 2007); *Herron v. Harrison*, 203 F.3d 410, 415 (6th Cir. 2000). A grievance is “protected conduct only to the extent that the underlying claims ha[ve] merit.” *Herron*, 203 F.3d at 415; *see Jackson v. Kronberg*, 111 F. App’x 815, 819 (6th Cir. 2004) (grievance that corrections officer had a spider-web tattoo that served as an “Aryan Nation symbol” not grievable so the filing of the grievance was not protected conduct); *Ziegler v. State of Mich.*, 90 F. App’x 808, 810 (6th Cir. 2004) (grievance that corrections officer conducted a non-invasive pat-down search of the plaintiff was frivolous and not protected conduct).

Long's complaint contains no allegations describing either the substance of any particular grievance he filed or any specific instance of retaliation by the Defendants. His assertion that he has been "targeted, ster[e]otyped, discriminated, and intimi[d]ated" is conclusory and devoid of any factual support. Therefore, Long has failed to state a claim of retaliation under the First Amendment.

Long also refers briefly to the inadequacy of the Jail's medical care, sanitation, and security procedures, such as the lack of an emergency button in his cell, and alleges these conditions are inhumane, cruel and unusual. The Eighth Amendment prohibits cruel and unusual punishments. *See generally Wilson v. Seiter*, 501 U.S. 294 (1991). However, Long's contention concerning those Jail conditions is unsupported by any factual allegations describing the supposed inadequacies. Moreover, Long does not allege that he suffered any actual harm as a result of those deficiencies. Therefore, he also fails to state any claim under the Eighth Amendment.

For all of the foregoing reasons, the complaint is subject to dismissal in its entirety for failure to state a claim on which relief may be granted.

The Sixth Circuit has held that a district court may allow a prisoner to amend his complaint to avoid a *sua sponte* dismissal under the PLRA. *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *see also Brown v. Rhode Island*, 511 F. App'x 4, 5 (1st Cir. Feb. 22, 2013) (per curiam) ("Ordinarily, before dismissal for failure to state a claim is ordered, some form of notice and an opportunity to cure the deficiencies in the complaint

must be afforded.”). Leave to amend is not required where a deficiency cannot be cured. *Brown*, 511 F. App’x at 5; *Gonzalez-Gonzalez v. United States*, 257 F.3d 31, 37 (1st Cir. 2001) (“This does not mean, of course, that every *sua sponte* dismissal entered without prior notice to the plaintiff automatically must be reversed. If it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile, then a *sua sponte* dismissal may stand.”); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002) (“*in forma pauperis* plaintiffs who file complaints subject to dismissal under Rule 12(b)(6) should receive leave to amend unless amendment would be inequitable or futile”); *Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir. 2001) (“We agree with the majority view that *sua sponte* dismissal of a meritless complaint that cannot be salvaged by amendment comports with due process and does not infringe the right of access to the courts.”). In this case, the Court cannot conclude that leave to amend would be futile.

In conclusion, the Court DISMISSES the complaint for failure to state a claim on which relief can be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1). However, leave to amend is GRANTED. Any amendment must be filed within twenty-one (21) days after the date of this order. Long is advised that any amended complaint will supersede the original complaint and must be complete in itself without reference to the prior pleading. The text of the complaint must allege sufficient facts to support each claim without reference to any extraneous document. Any exhibits must be identified by number in the text of the amended complaint and must be attached to the complaint. All

claims alleged in an amended complaint must arise from the facts alleged in the original complaint. Each claim for relief must be stated in a separate count and must identify each defendant sued in that count. If Long fails to file an amended complaint within the time specified, the Court will assess a strike pursuant to 28 U.S.C. § 1915(g) and enter judgment.

Long is reminded that he must promptly notify the Clerk, in writing, of any change of address or extended absence.

IT IS SO ORDERED.

s/ James D. Todd  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE